TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 152.

HENRY R. KIBBE, EDWARD J. CHAFFEE, GEORGE H. SHREVE, HENRY S. STOKES, ALBERT K. THOMPSON, AND HENRY G. KIBBE, DOING BUSINESS AS KIBBE, CHAFFEE, SHREVE & COMPANY, APPELLANTS,

vs.

ABRAHAM G. JENNINGS AND WARREN P. JENNINGS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 12, 1883.

accession 23848

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1 The President of the United States of America to Henry R. Kibbe, Edward J. Chaffee, George H. Shreve, Henry S. Stokes, Albert R. Thompson, and Henry G. Kibbe, doing business as Kibbe, Chaffe, Shreve & Co., Greeting:

You are hereby commanded that you, and each of you, personally appear before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, in equity, on the first Monday of March, A. D. 1881, wherever the said court shall then be, to answer a bill of complaint exhibited against you in the said court by Abraham G. Jennings and Warren P. Jennings, and do further and receive what the said court shall have considered in that behalf. And this you are not to omit under the penalty on you, and each of you, of two hundred and fifty dollars.

Witness Honorable Morrison R. Waite, Chief Justice of the
2 Supreme Court of the United States, at the city of New York, on the 12th day of February, in the year one thousand eight hundred and eighty-one, and of the Independence of the United States of America the hundred and fifth.

JOSEPH M. DEUEL, *Clerk.*

A. V. Briesen, sol'r, 229 Broadway, N. Y.

The defendants are required to enter appearance in the above cause in the clerk's office of this court on or before the first Monday of March, 1881, or the bill will be taken *pro confesso* against them.

J. M. D., *Clerk.*

Endorsed: I hereby certify that on the 12th day of February, 1881, at the city of New York, in my district, I personally served the within writ upon the within-named Edward J. Chaffee by exhibiting to him the within original, and at the same time leaving with him a copy thereof, dated March 5, 1881. Louis F. Payne, U. S. marshal, S. D. N. Y. F. B. U. S. circuit court. Filed Mar. 5, 1881. Joseph M. Deuel, clerk.

3 Circuit Court of the United States for the Southern District of New York. In Equity.

ABRAHAM G. JENNINGS and WARREN P. JENNINGS

vs.

HENRY R. KIBBE, EDWARD J. CHAFFEE, GEORGE H. SHREVE, HENRY S. Stokes, Albert K. Thompson, and Henry G. Kibbe, Doing Business as Kibbe, Chaffee, Shreve & Company.

To the honorable the judges of the circuit court of the United States for the southern district of New York:

Abraham G. Jennings and Warren P. Jennings, doing business at the city of New York, county and State of New York, and citizens of the State of New York, bring this their bill of complaint against Henry R. Kibbe, Edward J. Chaffee, George H. Shreve, Henry S. Stokes, Albert K. Thompson, and Henry G. Kibbe, doing business in the city of New York, county and State of New York, under the

firm name and style of Kibbe, Chaffee, Shreve & Company, and who are, as your orators are informed and believe, citizens of the United States, and thereupon your orators complain and say:

That Abraham G. Jennings, one of your orators, was and is the original and first inventor and producer of a new and original design for lace purling, fully described in the letters patent hereinafter mentioned, and which had not been known or used before said Abraham G. Jennings' said invention and production, and which was not for more than two years before his application for a patent, as hereinafter mentioned, in public use or on sale with his consent
4 or allowance, and which he, said Abraham G. Jennings, had invented and produced by his own industry, genius, efforts, and expense.

And your orators further show unto your honors (your orator Warren P. Jennings on information and belief) that said Abraham G. Jennings, being so as aforesaid the first inventor and producer of said new and original design for lace purling, did, on the 1st day of January, 1878, upon due application therefor, obtain letters patent of the United States for said invention, in due form of law, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents of the United States, bearing date the day and year last aforesaid, and numbered 10388, whereby there was granted and secured to said Abraham G. Jennings, his heirs, administrators, or assigns, or intended so to be, for the term of fourteen years from and after the date of said letters patent, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used the said invention and design as set forth in said letters patent, which, or a duly certified copy of which, is ready here in court to be produced, and by virtue whereof said Abraham G. Jennings became and was the sole owner of all the rights and privileges granted and secured, or intended to be granted and secured, in and by said letters patent.

And your orators further show unto your honors that Warren P. Jennings, one of your orators, was and is the original and first inventor and producer of a new and original design for fringed lace fabric, fully described in the letters patent hereinafter mentioned, and which had not been known or used before said Warren P. Jennings' said invention and production, and which was not for more than two years before his application for a patent, as hereinafter mentioned, in public use or on sale, with his consent or allowance, and which he, said Warren P. Jennings, had invented and produced by his own industry, genius, efforts, and expense.

And your orators further show unto your honors (your orator Abraham G. Jennings on information and belief) that said Warren P. Jennings, being so as aforesaid the first inventor and producer of said new and original design for fringed lace fabric, did, on the 12th day of February, 1878, upon due application therefor, obtain
5 letters patent of the United States for said invention, in due form of law, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior and countersigned by

the Commissioner of Patents of the United States, bearing date the day and year last aforesaid, and numbered 10448, whereby there was granted and secured to said Warren P. Jennings, his heirs, administrators, or assigns, or intended so to be, for the term of seven years from and after the date of said letters patent, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used the said invention and design as set forth in said letters patent, which, or a duly certified copy of which, is ready here in court to be produced, and by virtue whereof said Warren P. Jennings became and was the sole owner of all the rights and privileges granted and secured, or intended to be granted and secured, in and by said letters patent.

And your orators further show unto your honors that afterward, to wit, on or about the 20th day of February, 1878, the said Abraham G. Jennings, by an instrument in writing of that date, sold, assigned, and transfered unto your orators all his right, title, and interest in and to said invention and the letters patent No. 10388 therefor, granted as aforesaid, which said instrument in writing was duly recorded in the Patent Office of the United States, as by said instrument in writing, or a duly authenticated copy thereof, and the certificate of such recording thereto affixed, ready in court to be produced, will fully and at large appear.

And your orators further show unto your honors that afterward, to wit, on or about the 20th day of February, 1878, the said Warren P. Jennings, by an instrument in writing of that date, sold, assigned, and transferred unto your orators all his right, title, and interest in and to said invention and the letters patent No. 10448 therefor, granted as aforesaid, which said instrument in writing was duly recorded in the Patent Office of the United States, as by said instrument in writing, or a duly authenticated copy thereof, and the certificate of such recording thereto affixed, ready in court to be produced, will fully and at large appear.

And your orators further show unto your honors that by virtue of the premises your orators became, and now are, the sole
6 and exclusive owners of said several letters patent and the inventions and designs described therein and of all the rights and privileges granted and secured, or intended to be granted and secured, thereby; and that since they became the owners thereof, as aforesaid, your orators have invested and expended large sums of money, and have been to great trouble in and about said inventions and for the purpose of carrying on the business of manufacturing and selling lace fabrics which embody said designs, and making the same profitable to themselves and useful to the public, and that said inventions have been and are of great benefit and advantage; and that large quantities of said lace fabrics were made according to said inventions and sold by your orators, to the great advantage of the public; and that the public have generally acknowledged and acquiesced in the aforesaid rights of your orators; and your orators believe that they will realize and receive large gains and profits therefrom if infringements by said defendants and their confederates shall be prevented.

And your orators further show unto your honors that on the 4th day of October, 1879, your orators filed their bill of complaint in the circuit court of the United States for the district of Massachusetts against John E. Hodgkins and H. W. Beal, doing business as Hodgkins & Co.; that in their said bill they complained of the infringement by said defendants of design letters patent Nos. 10388 and 10448, being the same letters patent on which this present suit is brought, and prayed for an injunction and accounting against said defendants; that said defendants filed their answer to said bill on the 1st December, 1879, denying, amongst other things, the validity of said several letters patent, and that the complainants had any rights under the same, and setting up the non-patentability, prior knowledge and public use of the things patented in said several letters patent; that your orators on the 29th December, 1879, filed their replication to such answer, and that thereafter proofs were taken in said suit at length; that after due proceedings had said suit was reached for final hearing, and that upon due consideration thereof and after hearing arguments of counsel the court directed a decree to be entered sustaining the validity of said several letters patent and the rights of your orators under the same, and for an account and perpetual injunctions against said defendants, and that said decree was duly entered and the perpetual
7 injunctions were duly issued and served on said defendants and that the accounting under said decree is now being proceeded with.

And your orators further show unto your honors that on the 3d day of October, 1879, your orators filed their bill of complaint in this court against James H. Sayre, Joseph W. North, and James E. Hedges, doing business as Sayre & North.

That in their said bill they complained of the infringement by said defendants of the aforesaid design letters patent Nos. 10388 and 10448, and prayed for an injunction and account.

That said defendants duly appeared, and that thereafter, by advice of counsel, and after having examined into the validity of said several patents they acknowledged in writing the validity of said patents, and the rights of your orators under the same, and that such acknowledgment has been filed in the clerk's office of this court, and that said defendants have since dealt in goods which are duly licensed by your orators under said two letters patent.

Yet the said defendants, well knowing the premises and the rights secured to your orators as aforesaid, but contriving to injure your orators and to deprive them of the benefits and advantages which might and otherwise would accrue unto your orators from said inventions ever after the issuing of the said several letters patent as aforesaid and after your orators became jointly the owners thereof and before the commencement of this suit, did, as your orators are informed and believe, without the license or allowance and against the will of your orators and in violation of your orators' rights and in infringement of the aforesaid several letters patent, at the city of New York and other places, unlawfully and wrongfully and in defiance of the rights of your orators, make, construct, use, and vend to

others to be used the said inventions, and did make, construct, use, and vend to others to be used lace fabrics each made according to and employing and containing the inventions described and claimed in each of the above-named letters patent, and that said defendants and their confederates still continue so to do, and that they are threatening to make the aforesaid lace fabrics in large quantities and to supply the market therewith and to sell the same—all in defiance of the rights acquired by and secured to your orators as aforesaid, and to your orators' great and irreparable
8 loss and injury, and by which your orators have been and still are being deprived of great gains and profits which they might and otherwise would have obtained, but which have been received and enjoyed, and are being received and enjoyed, by the said defendants by and through their aforesaid and unlawful acts and doings.

And your orators further show unto your honors, on information and belief, that said defendants have made and sold, and caused to be made and sold, large quantities of said lace fabrics, and have a large quantity on hand which they are offering for sale, and have made and realized large profits and advantages therefrom, but to what extent and how much exactly your orators do not know, and pray a discovery thereof. And your orators say that the use of the said inventions by said defendants, in the manner aforesaid, and their preparation for and avowed determination to continue the same, and their other aforesaid unlawful acts in disregard and defiance of the rights of your orators, have the effect to and do encourage and induce others to venture to infringe said patents in disregard of your orators' rights.

And your orators further show unto your honors that they have caused notice to be given to said defendants of said infringements, and of the rights of your orators in the premises, and requested said defendants to desist and refrain therefrom, but said defendants disregarded said notice and refused to desist from said infringements, and still continue to make and sell said lace fabrics made in infringement of said several letters patent, after the receipt of said notice, without right.

And your orators pray that said defendants, Henry R. Kibbe, Edward J. Chaffee, George H. Shreve, Henry S. Stokes, Albert K. Thompson, and Henry G. Kibbe, their firm of Kibbe, Chaffee, Shreve & Co., and their and each of their servants, agents, attorneys, and workmen, and each and every of them, may be restrained and enjoined, provisionally and perpetually, by the order and injunction of this honorable court, from directly or indirectly making, constructing, using, vending, delivering, working, or putting into practice, operation, or use, or in anywise counterfeiting or imitat-
9 ing the said inventions, or either of them, or any part thereof, or any lace fabrics described and claimed in each or either of said letters patent made in accordance therewith, or like or similar to those which the said defendants have heretofore made; and that the said defendants may be decreed to pay the profits unlawfully obtained by them by reason of the aforesaid infringement, and the

damages thereby suffered by your orators, and the costs of this suit; and that your orators may have such further relief or such other relief as to this honorable court shall seem meet and as shall be agreeable to equity.

And, forasmuch as your orators can have no adequate relief except in this court, to the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may, upon their and each of their corporal oaths, according to their best and utmost knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to the premises, and to all the several matters of said matters, and may be compelled to account for and pay — hereinbefore stated and charged, as fully and particularly as if severally and separately interrogated as to each and every — to your orators the profits by them acquired and the damages suffered by your orators from the aforesaid unlawful acts—

May it please your honors to grant unto your orators the writ of injunction, as well provisional as perpetual, issuing out of and under the seal of this honorable court, commanding, enjoining, and restraining the said defendants, Henry R. Kibbe, Edward J. Chaffee, George H. Shreve, Henry S. Stokes, Albert K. Thompson, and Henry G. Kibbe, their firm of Kibbe, Chaffee, Shreve & Co., and their and each of their servants, agents, attorneys, and workmen, and each and every of them, as is hereinbefore in that behalf prayed.

May it please your honors to grant unto your orators the writ of subpœna, issuing out of and under the seal of this honorable court, directed to the said defendants, Henry R. Kibbe, Edward J. Chaffee, George H. Shreve, Henry S. Stokes, Albert K. Thompson, and Henry G. Kibbe, commanding them, by a certain day and under a certain penalty, to be and appear in this honorable court, then and there to answer the premises, and to stand to and abide such order and decree as may be made against them.

And your orators will ever pray, &c.

ABRAHAM G. JENNINGS.
WARREN P. JENNINGS.

ARTHUR V. BRIESEN,
Compl'ts' Sol'r and of Counsel.

UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

On this third day of February, 1881, before me personally appeared Abraham G. Jennings and Warren P. Jennings, the abovenamed complainants, who, being by me severally duly sworn, depose and say that they have read the foregoing bill of complaint subscribed by them and know the contents thereof, and that the same is true of their own knowledge, except as to the matters therein stated on information and belief, and as to those matters they believe it to be true, and that they verily believe said Abraham G. Jennings and Warren P. Jennings to be respectively the first and sole inventors and producers of the new and original designs for lace purling and

fringed lace fabrics described and claimed in the said several letters patent referred to in said bill of complaint.

ABRAHAM G. JENNINGS.
WARREN P. JENNINGS.

Sworn to before me this 3d day of February, 1881.

[SEAL.] SAM'L R. BETTS,
United States Commissioner, Southern District of New York.

(Endorsed:) United States circuit court, southern district of New York. Abraham G. Jennings and Warren P. Jennings *vs.* Henry R. Kibbe *et al.* Bill in equity. A. V. Briesen, complainants' solicitor, 229 Broadway, New York. (U. S. circuit court. Filed Feb. 12, 1881. Joseph N. Deuel, clerk.)

11 United States Circuit Court, Southern District of New York.
In Equity.

ABRAHAM G. JENNINGS AND WARREN P. JENNINGS
vs.
KIBBE, CHAFFE, SHREVE & CO.

SIR: You will please enter an appearance for defendants in the above-entitled cause.

Dated March 5th, 1881.

Yours, &c., GEORGE HARDING,
JOHN R. BENNETT,
Solicitors and of Counsel for Defendants.

To J. M. Deuell, Esq., clerk U. S. circuit court, southern district of New York.

Endorsed: United States circuit court, southern district of New York. A. G. Jennings *et al. vs.* Kibbe, Chaffe, Shreve & Co.
12 Appearance: George Harding, John R. Bennett, solicitor and counsel for def'ts', 237 Broadway. U. S. circuit court. Filed Mar. 5, 1881. Joseph M. Deuel, clerk.

13 United States Circuit Court, Southern District of New York.
In Equity.

ABRAHAM G. JENNINGS and WARREN P. JENNINGS
vs.
HENRY R. KIBBE, EDWARD J. CHAFFEE, GEORGE H. SHREVE, HENRY S. STOKES, ALBERT K. THOMPSON, and HENRY G. KIBBE, Doing Business as Kibbe, Chaffee, Shreve & Company.

To the honorable the judges of the circuit court of the United States in and for the southern district of New York:

The joint and several answer of Henry R. Kibbe, Edward J. Chaffee, George H. Shreve, Henry S. Stokes, Albert K. Thompson, and Henry G. Kibbe, doing business as Kibbe, Chaffee, Shreve & Company, defendants, to the bill of complaint of Abraham G. Jennings and Warren P. Jennings, complainants.

These defendants, for answer to the said bill of complaint, and not waiving any objections thereto, say—

I.

They admit that letters patent of the United States No. 10388 were granted to the said Abraham G. Jennings January 1, 1878, for "design for lace purling," but deny that the said Jennings was the original and first inventor and producer of the said "design for lace purling" shown, described, and claimed in said letters patent,
14 or that the same had not been known or used by others before the date of the said alleged invention and production by the said Jennings, or that the same had not, prior to the date of the said alleged invention and production or for more than two years before his application for said letters patent, been in public use or on sale, or that the said Jennings invented and produced said "design for lace purling" by his own industry, genius, efforts, and expense, or that by reason of the grant of the said letters patent the said Jennings became the sole owner of the said "design for lace purling" therein shown, described, and claimed.

II.

They admit that letters patent of the United States No. 10448 were granted to Warren P. Jennings February 12, 1878, for "design for a fringed laced fabric," but deny that the said Jennings was the original and first inventor and producer of the said "design for a fringed lace fabric" shown, described, and claimed in the said letters patent, or that the same had not been known or used by others before the date of the said alleged invention and production by the said Jennings, or that the same had not, prior to the date of the said alleged invention or production or for more than two years before his application for said letters patent, been in public use or on sale, or that the said Jennings invented or produced said "design for a fringed lace fabric" by his own industry, genius, efforts, and expense, or that by reason of the grant of the said letters patent the said Jennings became the sole owner of the said "design for a fringed lace fabric" therein shown, described, and claimed.

III.

They have no knowledge as to the alleged assignment of February 20, 1878, from Abraham G. Jennings to the complainants, and leave complainants to make such proof thereof as they may be advised.

15 IV.

They have no knowledge as to the alleged assignment of February 20, 1878, from Warren P. Jennings to the complainants, and leave complainants to make such proof thereof as they may deem necessary.

V.

They have no knowledge as to whether, by virtue of the said alleged assignments, the complainants became, and now are, the sole and exclusive owners of the said several letters patent above referred to, and leave complainants to make such proof thereof as they may deem necessary.

VI.

They deny, upon information and belief, that the complainants have "invested and expended large sums of money, and have been to great trouble in and about said inventions, and for the purpose of carrying on the business of manufacturing and selling lace fabrics which embody said designs and making the same profitable to themselves and useful to the trade, and that said inventions have been and are of great benefit and advantage, and that large quantities of said lace fabric were made according to said inventions and sold by the 'complainants,' to the great advantage of the public, and that the public have generally acknowledged and acquiesced in the aforesaid rights of the 'complainants.'"

VII.

They deny that they have in any manner or way whatsoever infringed the said several letters patent, or either of them, or that they intend or threaten so to do.

16 VIII.

They deny that they have caused the complainants any loss or damage or injury whatsoever, or that the complainants have been deprived of any gains or profits to which they might or otherwise would have obtained and been in the receipt and enjoyment of had it not been for their acts and doings.

IX.

They admit that the complainants filed a bill of complaint in the circuit court of the United States for the district of Massachusetts against John Hodgkins and H. W. Beal, doing business as Hodgkins & Beal, for alleged infringement of the said letters patent, and each of them; that said defendants appeared and filed answer thereto; that issue was joined and proofs taken in said cause on behalf of complainants, but they are informed and believe that no proofs were taken by or on behalf of the said defendants, nor was any defense whatsoever interposed by them or on their behalf, and that the decree entered by the court in said suit was by reason of default on the part of the said defendants.

X.

They charge, on information and belief, that the said letters patent No. 10388, for "design for lace purling," are void; for that the said "design for lace purling" therein shown, described, and claimed was not new and original with the said Abraham G. Jennings, but that the same was, prior to the date of the said alleged invention and production thereof by the said Jennings, known to and used by the following-named persons at the following-named places, viz:

Henry Colton, of Philadelphia, Pennsylvania, at the factory of Messrs. Slocum, in the city of New York, and elsewhere.

Henry Boot, deceased, late of Philadelphia, Pennsylvania, at the

factory of Thomas Dolan, in said city of Philadelphia, and elsewhere.

Thomas Dolan, of the city of Philadelphia, at the said city of Philadelphia, and elsewhere.

17 Henry A. Truitt, of Philadelphia, Pennsylvania, at the city of Philadelphia, and elsewhere.

Cornelius Jackson, of Philadelphia, Pennsylvania, at the factory of Thomas Dolan, in said city of Philadelphia.

William McDevitt, of Philadelphia, Pennsylvania, at the factory of Thomas Dolan, in said city of Philadelphia.

Henry R. Kibbe, of Somers, Tolland county, in the State of Connecticut, at the city of Philadelphia, and elsewhere.

Dunnington, of Boston, Massachusetts, at the city of Brooklyn, New York, and elsewhere.

XI.

They charge, on information and belief, that the said letters patent No. 10388 are void, for that the "design for lace purling" shown, described, and claimed therein was not original with the said A. G. Jennings, nor did he invent and produce the same by his own industry, genius, efforts, and expense, but that the same was invented and produced by the industry, genius, efforts, and expense of —— Dunnington, now of Boston, Massachusetts, then of Brooklyn, New York, who, after inventing and producing the said designs for lace purlings, exhibited and explained the same to the said A. G. Jennings, who thereupon surreptitiously and unjustly obtained the said letters patent No. 10388 for that which had, prior thereto, been invented and produced by the industry, genius, efforts, and expense of the said Dunnington.

XII.

They charge, on information and belief, that the said letters patent No. 10388 are void, for that the "design for lace purling" shown, described, and claimed therein was not original with the said A. G. Jennings, nor did he invent or produce the same by his own industry, genius, efforts, and expense, but that the same was invented and produced by the industry, genius, efforts, and expense of Henry Boot, deceased, late of Philadelphia, Pennsylvania, then of Brooklyn, New York, who, after inventing and producing the said

18 "design for lace purling," exhibited and explained the same to the said A. G. Jennings, who thereupon surreptitiously and unjustly obtained the said letters patent No. 10388 for that which had, prior thereto, been invented and produced by the industry, genius, efforts, and expense of the said Boot.

XIII.

They charge, on information and belief, that the said letters patent No. 10448 for "design for a fringed lace fabric" are void, for that the said design therein shown, described, and claimed was not new and original with the said Warren P. Jennings, but that the same was, prior to the date of the said alleged invention and pro-

duction thereof by the said Jennings, known to and used by the following-named persons at the following-named places, viz:

Henry Colton, of Philadelphia, Pennsylvania, at the factory of Messrs. Slocum, in the city of New York, and elsewhere.

Henry Boot, deceased, late of Philadelphia, Pennsylvania, at the factory of Thomas Dolan, in said city of Philadelphia, and elsewhere.

Thomas Dolan, of the city of Philadelphia, at said city, and elsewhere.

Henry A. Truitt, of Philadelphia, Pennsylvania, at said city, and elsewhere.

Cornelius Jackson, of Philadelphia, Pennsylvania, at the factory of Thomas Dolan, in said city of Philadelphia.

William McDevitt, of Philadelphia, Pennsylvania.

Henry R. Kibbe, of Somers, Tolland county, State of Pennsylvania, at the city of Philadelphia, and elsewhere.

Dunnington, of Boston, Massachusetts, at the city of Brooklyn, New York, and elsewhere.

XIV.

They charge, on information and belief, that the said letters patent No. 10448 are void, for that the "design for a fringed lace fabric" shown, described, and claimed therein was not original
19 with the said Warren P. Jennings, nor did he invent or produce the same by his own industry, genius, efforts, and expense, but that the same was invented and produced by the industry, genius, efforts, and expense of —— Dunnington, now of Boston, Massachusetts, then of Brooklyn, New York, who, after inventing and producing the said designs for a fringed lace fabric, exhibited and explained the same to the said Warren P. Jennings, who thereupon surreptitiously and unjustly obtained the said letters patent No. 10448 for that which had prior thereto been invented and produced by the industry, genius, efforts, and expense of the said Dunnington.

XV.

They charge, on information and belief, that the said letters patent No. 10448 are void, for that the "design for a fringed lace fabric" shown, described, and claimed therein was not original with the said Warren P. Jennings, nor did he invent or produce the same by his own industry, genius, efforts, and expense, but that the same was invented and produced by the industry, genius, efforts, and expense of Henry Boot, deceased, late of Philadelphia, Pennsylvania, then of Brooklyn, New York, who, after inventing and producing the said "design for a fringed fabric," exhibited and explained the same to the said Warren P. Jennings, who thereupon surreptitiously and unjustly obtained the said letters patent No. 10448 for that which had prior thereto been invented and produced by the industry, genius, efforts, and expense of the said Boot.

XVI.

They are advised and believe that the said several letters patent No. 10338 for "design for lace purling" and No. 10448 for "design for a fringed lace fabric," and each of them, are void for want of novelty.

XVII.

They submit that the complainants are not entitled to the relief sought for in said bill of complaint, and, without admitting any matters therein charged and not sufficiently herein answered unto are true, pray to be hence dismissed, with their costs.

EDW'D J. CHAFFEE.

GEORGE HARDING,
JOHN R. BENNETT,
Counsel for Defendants.

UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

STATE OF NEW YORK, *City and County of New York.* } *ss:*

Edward J. Chaffee, one of the above-named defendants, being duly sworn, deposes and says as follows: That the foregoing answer by him subscribed is true, so far as the statements therein contained are within his own knowledge, and so far as made on information and belief he verily believes them to be true.

EDW'D J. CHAFFEE.

Subscribed and sworn to before me this 12th day of April, A. D. 1881.

[L. S.] HENRY J. THORNTON,
Notary Public, City and County of New York.

(Endorsed:) United States circuit court, southern district of New York. Abraham G. Jennings and Warren P. Jennings *vs.* Henry R. Kibbe *et al.* George Harding, John R. Bennett, solicitors for defendant; George Harding, of counsel. U. S. circuit court. Filed Apr. 12, 1881. Joseph M. Deuel, clerk.

21 Circuit Court of the United States for the Southern District of New York. In Equity.

ABRAHAM G. JENNINGS and WARREN P. JENNINGS
vs.
HENRY R. KIBBE, EDWARD J. CHAFFEE, GEORGE H. SHREVE, HENRY C. STOKES, ALBERT K. THOMPSON, and HENRY G. KIBBE, Doing Business as Kibbe, Chaffee, Shreve & Co.

The replication of Abraham G. Jennings and Warren P. Jennings, complainants, to the answer of Henry R. Kibbe, Edward J. Chaffee, George H. Shreve, Henry C. Stokes, Albert K. Thompson, and Henry G. Kibbe, and their firm of Kibbe, Chaffee, Shreve & Co.

These repliants, saving and reserving unto themselves now and at

all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say that they will aver, maintain, and prove their said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient
22 to be replied unto by these repliants:

Without this, that any other matter or thing whatsoever in the said answer contained material or effectual in law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true.

All which matters and things these repliants are and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

A. V. BRIESEN,
Solicitor for Complainant-.

(Endorsed:) United States circuit court, southern district of New York. In equity. A. G. Jennings *et al. vs.* Henry R. Kibbe *et al.* Replication. A. V. Briesen, solicitor for complainants, No. 229 Broadway, New York, N. Y. U. S. circuit court. Filed Apr. 25, 1881. Joseph M. Deuel, clerk.

23 United States Circuit Court Southern District of New York.

ABRAHAM G. JENNINGS *et al. vs.* HENRY R. KIBBE & O'rs.

Testimony taken on the part of the complainants, under and pursuant to the 67th rule of the Supreme Court of the United States as amended, before John A. Shields, Esqr., a standing examiner of said court, pursuant to notice.

NEW YORK, *April 28th,* 1881.

Present: A. V. Briesen, Esq., of counsel for comp'ts, and John R. Bennett, Esq., of counsel for def'ts.

Counsel for comp'ts offers in evidence lettters patent No.
24 10388, granted to Abraham G. Jennings January 1st, 1878, for design for lace purling, and the same is marked Comp'ts' Exh. Fabric Patent. J. A. S., Ex'r. April 28, 1881.

Also letters patent No. 10448, granted to Warren P. Jennings Feb'y 12th, 1878, for design for fringed lace fabric, and the same is marked Comp'ts' Exh. Fringed Patent. J. A. S., Ex'r. April 28, 1881.

Also assignment from A. G. Jennings to himself and Warren P. Jennings, bearing date Feb'y 20, 1878, with certificate of record thereon, and the same is marked Comp'ts' Exh. No. 1. J. A. S., Ex'r. April 28, 1881.

25 Also assignment from W. P. Jennings to himself and A. G. Jennings, bearing date Feb'y 20th, 1878, with certificate of record thereon, and the same is marked Comp'ts' Exh. No. 2. J. A. S. Ex'r. April 28, 1881.

Counsel for comp'ts asks whether counsel for def'ts will or will or will not waive proof of execution of the assignments.

Counsel for def'ts waives proof of execution of the assignments just offered in evidence.

Counsel for comp'ts also offers in evidence a nubia, and the same is marked Comp'ts' Exh. Kibbe Nubia. J. A. S., Ex'r. April
26 28, 1881, and asks counsel for def'ts to admit that said nubia is one sold by the def'ts prior to the commencement of this suit and subsequent to the issue of Exh's Fabric Patent and Fringe Patent.

Counsel for def'ts admits that the nubia produced was purchased from the def'ts firm on December 30, 1880, and prior to the commencement of this suit.

Complainants rest.

27 UNITED STATES PATENT OFFICE.

ABRAHAM G. JENNINGS, of Brooklyn New York.

Design for Lace Purling.

Specification forming part of Design No. 10388, dated January 1, 1878; application filed December 17, 1877.

To all whom it may concern:

Be it known that I, Abraham G. Jennings, of Brooklyn, Kings county, New York, have invented a new and original design for lace purling, of which the following is a specification:

Figure 1 represents a photographic illustration of my new lace purling. Fig. 2 is a photographic illustration of the same design made of coarser thread.

This invention relates to a new design for a lace fabric, and it consists in providing the pillars thereof with more or less irregular laterally-projecting loops, thereby imparting to the entire fabric a puckered, wavy, purl-like appearance, which is indicated in the photograph. The loops on the pillars are placed close together to increase the effect.

I claim—

The design for a lace purling the pillars whereof are provided with irregular laterally-projecting loops, substantially as shown.

ABRAHAM G. JENNINGS.

Witnesses:
T. V. MOSHER,
A. T. BRIESEN.

28 A. G. Jennings *et al. vs.* Henry R. Kibbe & *al.* Comp'ts' Exhibit Fringe Patent. J. A. S., Ex'r. Sept. 10, 1881.

(Here follows diagram marked p. 29.)

DESIGN.

A. G. JENNINGS.

Lace Purling.

No. 10,388. Patented Jan. 1, 1878.

No. 152
Kibbe et al.
v.
Jennings et al.
p. 29

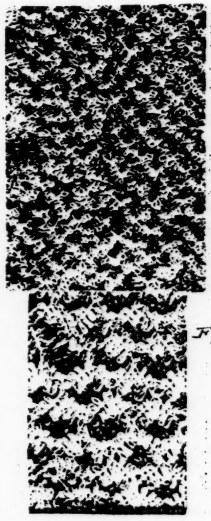


Fig. 1

Fig. 2

Witnesses:
John C. Tunbridge
H. B. Wilson

Inventor:
Abraham G. Jennings
by his attorney
Alex. Wilson

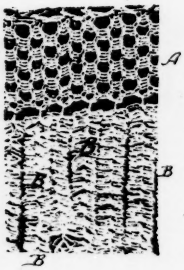
DESIGN.

W. P. JENNINGS.

Fringed Lace Fabric.

No. 10,448. Patented Feb. 12, 1878.

No. 152.
Kibbe et al.
v.
Jennings et al.
} p. 32



Witnesses:
John C. Tunbridge
D. Bruesen

Inventor:
Warren P. Jennings
by his attorney
A. J. Bruesen

30 UNITED STATES PATENT OFFICE.

WARREN P. JENNINGS, of Brooklyn, New York.

Design for a Fringed-Lace Fabric.

Specification forming part of Design No. 10448, dated February 12, 1878. Application filed January 9, 1878.

To all whom it may concern:

Be it known that I, Warren P. Jennings, of Brooklyn, Kings county, New York, have invented a new and original design for fringed-lace fabric, of which the following is a specification:

The accompanying photograph illustrates a face view of my new design.

This invention relates to a new looped fringe applied in series to lace fabrics.

A represents the lace fabric of usual kind. B B are the disconnected fringes applied thereto. Each fringe B is formed with loops at both sides of a central stem or rib along its entire extent, as shown, thus producing a peculiar, full, and yet loose effect. The fringes are arranged in series of rows and suspended from the lace fabric.

I claim—

The design for a lace fabric provided with disconnected doubly-looped fringes B, having loops at both sides of a central stem or rib, substantially as shown.

WARREN P. JENNINGS.

Witnesses—
TH. JUNCKE.
A. G. JENNINGS.

31 [Endorsed:] A. G. Jennings *et al. vs.* H. R. Kibbe *et al.* Comp'ts' Exh. Fabric Patent. J. A. S., Ex'r. April 28, 1881.

(Here follows diagram marked p. 32.)

33 Whereas I, Abraham G. Jennings, of Brooklyn, in the county of Kings and State of New York, did obtain letters patent of the United States of America for a certain new and original design for lace purling (for the term of 14 years), which letters patent bear date the first day of January, eighteen hundred and seventy-eight, and are numbered 10388;

And whereas Abraham G. Jennings and Warren P. Jennings, both of Brooklyn, in the county of Kings and State of New York, are desirous of acquiring all my right, title, and interest in and to said invention:

Now this indenture witnesseth that for and in consideration of the sum of one dollar to me, the said Abraham G. Jennings, in hand paid, the receipt of which is hereby acknowledged, I have assigned,

34 sold, and set over, and do hereby assign, sell, and set over, unto the said Abraham G. Jennings and Warren P. Jennings all the right, title, and interest which I have in the said invention as secured to me by said letters patent; the same to

be held and enjoyed by the said Abraham G. Jennings and Warren P. Jennings for their own use and behoof and for the use and behoof of their legal representatives to the full end of the term for which said letters patent are granted as fully and entirely as the same would have been held and enjoyed by me if this assignment and sale had not been made.

In testimony whereof I hereunto set my hand and affix my seal this 20th day of February, eighteen hundred and seventy-eight.

A. G. JENNINGS. [L. S.]

Sealed and delivered in the presence of—
THOS. STRINGER.

35 Endorsed: A. G. Jennings' design patent No. 10388 to himself and W. P. Jennings. Assignment of patent. U. S. Patent Office. Received for record Sept. 29, 1879. Recorded liber L 24, page 411. Ex'd: C. E. L. Record & return to A. V. Briesen, patent and law office, 229 Broadway, New York. A. V. Briesen, patent agency, 229 Broadway, N. Y. Oct. 16, 1879. A. G. Jennings *et al. vs.* H. R. Kibbe *et al.* Comp'ts' Exh. No. 1. J. A. S., Ex'r. April 28, 1881. A. G. Jennings *et al. vs.* Thomas Dolan. Comp'ts' Exhibit No. 1. J. A. S., Ex'r. Sept. 10, 1881.

36 Whereas I, Warren P. Jennings, of Brooklyn, in the county of Kings and State of New York, did obtain letters patent of the United States of America for a certain new and original design for a fringed lace fabric—term of patent, 7 years—which letters patent bear date the twelfth day of February, eighteen hundred and seventy-eight, and are numbered 10448;

And whereas Warren P. Jennings and Abraham G. Jennings, both of Brooklyn, in the county of Kings and State of New York, are desirous of acquiring all my right, title, and interest in and to said invention:

Now, this indenture witnesseth that for and in consideration of the sum of one dollar to me, the said Warren P. Jennings, in hand paid, the receipt of which is hereby acknowledged, I have assigned, sold, and set over, and do hereby assign, sell, and set over,

37 unto the said Warren P. Jennings and Abraham G. Jennings all the right, title, and interest which I have in the said invention as secured to me by said letters patent, the same to be held and enjoyed by the said Warren P. Jennings and Abraham G. Jennings for their own use and behoof and for the use and behoof of their legal representatives to the full end of the term for which said letters patent are granted as fully and entirely as the same would have been held and enjoyed by me if this assignment and sale had not been made.

In testimony whereof I hereunto set my hand and affix my seal this 20th day of February, eighteen hundred and seventy-eight.

WARREN P. JENNINGS. [L. S.]

Sealed and delivered in presence of—
THOS. STRINGER.

(Endorsed:) W. P. Jennings' design patent No. 10448 to himself and A. G. Jennings. Assignment of patent. U. S. Patent Office. Received for record Sept. 29, 1879. Recorded liber L 24, page 412. Record & return to A. V. Briesen, patent and law office, 229 Broadway, New York. A. V. Briesen, patent agency, 229 Broadway, N. Y. Oct. 16, 1879. Ex'd: C. E. L. A. G. Jennings *et al. vs.* H. R. Kibbe *et al.* Compl'ts' Ex. No. 2. J. A. S., Ex'r. April 28, 1881. A. G. Jennings *et al. vs.* Thomas Dolan. Compl'ts' Ex. No. 2. J. A. S., Ex'r. Sept. 10, 1881.

39 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Friday, the sixth day of January, in the year of our Lord one thousand eight hundred and eighty-two.

Present: The Honorable Samuel Blatchford, circuit judge.

ABRAHAM G. JENNINGS *et al.*
vs.
HENRY R. KIBBE *et als.*

The above cause coming on this day for final hearing upon pleadings and proofs, Mr. Arthur V. Briesen is heard in behalf of the complainants. Mr. John R. Bennett is heard in behalf of the defendants. C. A. V.

40 Circuit Court of the United States for the Southern District of New York.

ABRAHAM G. JENNINGS and WARREN P. JENNINGS
vs.
HENRY R. KIBBE, EDWARD J. CHAFFE, GEORGE H. SHREVE, HENRY L. STOKES, ALBERT K. THOMPSON, and HENRY G. KIBBE.

BLATCHFORD, *C. J.:*

This suit is brought on the letters patent for designs. One is No. 10388, granted to Abraham G. Jennings, for 14 years, on January 1, 1878, for a "design for lace purling." The other is No. 10448, granted to Warner P. Jennings, for seven years, on February 12, 1878, for a "design for a fringed lace fabric."

The specification of No. 10388 says: "Figure 1 represents a photographic illustration of my new lace purling. Figure 2 is a photo-
graphic illustration of the same design made of coarser
41 thread. This invention relates to a new design for a lace fabric, and consists in providing the pillars thereof with more or less irregular, laterally projecting loops, thereby imparting to the entire fabric a puckered, wavy, purl-like appearance, which is indicated in the photograph. The loops on the pillars are placed close together to increase the effect."

The claim is this:

"The design for a lace purling, the pillars whereof are provided with irregular, laterally projecting loops, substantially as shown."

The specification of No. 10448 says:

"The accompanying photograph illustrates a face view of my new design. This invention relates to a new looped fringe applied in series to lace fabrics. A represents the lace fabric, of usual kind. B B are the disconnected fringes applied thereto. Each fringe
42 B is formed with loops at both sides of a central stem or rib along its entire extent, as shown, thus producing a peculiar, full, and yet loose effect. The fringes are arranged in series of rows and suspended from the lace fabric."

The claim is this:

"The design for a lace fabric provided with disconnected doubly-looped fringes B, leaving loops at both sides of a central stem or rib, substantially as shown."

The answer denies infringement, and sets up various defences to both patents. In taking proofs for final hearing, the counsel for the defendants being present, the plaintiffs put in evidence the two patents and assignments to the plaintiffs and a nubia. The counsel for the defendants admitted, on the record of proofs, that the said nubia was purchased from the defendant firm prior to the commencement of this suit. The plaintiffs then rested their case. The defendants took no testimony. The plaintiffs bring the case now to final hearing on the foregoing evidence without introducing
43 any witness to show the identity of design between what is found in said nubia and in the plaintiffs' patents. The defendants contend that it is not sufficient for the plaintiffs to show merely the sale of the nubia by the defendants, and to leave the court to inspect the nubia and compare it with the patents, but that the plaintiffs must produce a witness to testify to identity of design.

In Gorham Co. *v.* White, 14 Wall., 511, the Supreme Court considered directly the question of identity in regard to a patent for a design.

It held that the true test of identity of design is sameness of appearance; in other words, sameness of effect upon the eye; that it is not necessary that the appearance should be the same to the eye of an expert, and that the test is the eye of an ordinary observer—the eyes of men generally—of observers of ordinary
44 acuteness, bringing to the examination of the article upon which the design has been placed that degree of observation which men of ordinary intelligence give. The court compared, in that case, the design of the patent with the designs on the defendants' article, and arrived at the conclusion from such comparison that the designs of the defendants were, in their effect as a whole, notwithstanding variances, substantially the same as the design of the patent and infringements. In addition to this, there was the testimony of witnesses on both sides on the question, and the court was of opinion also that the testimony proved the infringements.

In view of the proper test of identity, as above given, and of the simple character of the designs in the present case, and of
45 the absence of any testimony on the part of the defendants, I am of opinion that the absence of testimony as to identity does not make it improper for the court in this case to compare the

defendants' nubia with the patents as to design and to determine the question of identity from such comparison. It is not intended to imply that the practice can be extended to any other patent than one for a design, or that it ought to be extended to all patents for designs.

On such comparison it is found that the defendants' nubia infringes both of the patents, and a decree in the usual form in favor of the plaintiffs, with costs, will be entered.

A. V. BRIESEN,
For Plaintiffs.
J. R. BENNETT,
For Defendants.

46 Endorsed: Abraham G. Jennings *et al. vs.* Henry R. Kibbe *et al.* Decision. U. S. circuit court. Filed Feb. 21, 1881. Joseph M. Deuel, clerk.

47 *Affidavit of Service.*

A. G. JENNINGS & *al. against* HENRY R. KIBBE & *al.*

SOUTHERN DISTRICT OF NEW YORK, } ss:
City and County of New York, }

William H. C. Smith, being duly sworn, says that he is of the age of forty-two years and upwards; that on the 20th day of February, 1882, between the hours of 3 p. m. and 4 p. m., at No. 237 Broadway, in the city of New York, N. Y., he served George Hard-
48 ing and John R. Bennett, the solicitors for the defendants herein, with the annexed notice and copy of proposed decree by leaving a copy of the same with a person in charge of the offices of said George Harding and John R. Bennett during their absence from said offices.

WILLIAM H. C. SMITH.

Sworn before me this twentieth day of February, 1882.
WILLY G. E. SCHULTZ,
Notary Public, Kings Co., N. Y.

Certificate filed [in] N. Y. Co.

United States Circuit Court, Southern District of New York. In Equity.

ABRAHAM G. JENNINGS and WARREN P. JENNINGS
vs.
HENRY R. KIBBE, EDWARD J. CHAFFEE, GEORGE H. SHREVE, HENRY S. STOKES, ALBERT K. THOMPSON, and HENRY G. KIBBE, &c.

Take notice that on Tuesday, the 21st day of February, 1882, at 2 o'clock p. m., at his chambers in the post office building in
49 New York city, we shall present to the Hon. Samuel Blatchford, circuit judge, for signature, the decree, a copy of which is hereto annexed and served upon you.

The specification of No. 10448 says:

"The accompanying photograph illustrates a face view of my new design. This invention relates to a new looped fringe applied in series to lace fabrics. A represents the lace fabric, of usual kind. B B are the disconnected fringes applied thereto. Each fringe
42 B is formed with loops at both sides of a central stem or rib along its entire extent, as shown, thus producing a peculiar, full, and yet loose effect. The fringes are arranged in series of rows and suspended from the lace fabric."

The claim is this:

"The design for a lace fabric provided with disconnected doubly-looped fringes B, leaving loops at both sides of a central stem or rib, substantially as shown."

The answer denies infringement, and sets up various defences to both patents. In taking proofs for final hearing, the counsel for the defendants being present, the plaintiffs put in evidence the two patents and assignments to the plaintiffs and a nubia. The counsel for the defendants admitted, on the record of proofs, that the said nubia was purchased from the defendant firm prior to the commencement of this suit. The plaintiffs then rested their case. The defendants took no testimony. The plaintiffs bring the case now to final hearing on the foregoing evidence without introducing
43 any witness to show the identity of design between what is found in said nubia and in the plaintiffs' patents. The defendants contend that it is not sufficient for the plaintiffs to show merely the sale of the nubia by the defendants, and to leave the court to inspect the nubia and compare it with the patents, but that the plaintiffs must produce a witness to testify to identity of design.

In Gorham Co. *v.* White, 14 Wall., 511, the Supreme Court considered directly the question of identity in regard to a patent for a design.

It held that the true test of identity of design is sameness of appearance; in other words, sameness of effect upon the eye; that it is not necessary that the appearance should be the same to the eye of an expert, and that the test is the eye of an ordinary observer—the eyes of men generally—of observers of ordinary
44 acuteness, bringing to the examination of the article upon which the design has been placed that degree of observation which men of ordinary intelligence give. The court compared, in that case, the design of the patent with the designs on the defendants' article, and arrived at the conclusion from such comparison that the designs of the defendants were, in their effect as a whole, notwithstanding variances, substantially the same as the design of the patent and infringements. In addition to this, there was the testimony of witnesses on both sides on the question, and the court was of opinion also that the testimony proved the infringements.

In view of the proper test of identity, as above given, and of the simple character of the designs in the present case, and of
45 the absence of any testimony on the part of the defendants, I am of opinion that the absence of testimony as to identity does not make it improper for the court in this case to compare the

defendants' nubia with the patents as to design and to determine the question of identity from such comparison. It is not intended to imply that the practice can be extended to any other patent than one for a design, or that it ought to be extended to all patents for designs.

On such comparison it is found that the defendants' nubia infringes both of the patents, and a decree in the usual form in favor of the plaintiffs, with costs, will be entered.

A. V. BRIESEN,
For Plaintiffs.
J. R. BENNETT,
For Defendants.

46 Endorsed: Abraham G. Jennings *et al. vs.* Henry R. Kibbe *et al.* Decision. U. S. circuit court. Filed Feb. 21, 1881. Joseph M. Deuel, clerk.

47 *Affidavit of Service.*

A. G. JENNINGS & *al. against* HENRY R. KIBBE & *al.*

SOUTHERN DISTRICT OF NEW YORK, }
City and County of New York, } *ss:*

William H. C. Smith, being duly sworn, says that he is of the age of forty-two years and upwards; that on the 20th day of February, 1882, between the hours of 3 p. m. and 4 p. m., at No. 237 Broadway, in the city of New York, N. Y., he served George Hard-
48 ing and John R. Bennett, the solicitors for the defendants herein, with the annexed notice and copy of proposed decree by leaving a copy of the same with a person in charge of the offices of said George Harding and John R. Bennett during their absence from said offices.

WILLIAM H. C. SMITH.

Sworn before me this twentieth day of February, 1882.
WILLY G. E. SCHULTZ,
Notary Public, Kings Co., N. Y.

Certificate filed [in] N. Y. Co.

United States Circuit Court, Southern District of New York. In Equity.

ABRAHAM G. JENNINGS and WARREN P. JENNINGS
vs.
HENRY R. KIBBE, EDWARD J. CHAFFEE, GEORGE H. SHREVE, HENRY S. STOKES, ALBERT K. THOMPSON, and HENRY G. KIBBE, &c.

Take notice that on Tuesday, the 21st day of February, 1882, at 2 o'clock p. m., at his chambers in the post office building in
49 New York city, we shall present to the Hon. Samuel Blatchford, circuit judge, for signature, the decree, a copy of which is hereto annexed and served upon you.

In case of Judge Blatchford's absence from chambers at that time, the decree will be handed to the clerk of the circuit court, to be submitted to Judge Blatchford.

N. Y., Feb. 20, 1882.

Yours, truly, BRIESEN & BETTS,
Compl'ts' Sol'rs.

To George Harding and John R. Bennett, Esqrs., def'ts' sol'rs.

At a stated term of the United States circuit court held in and for the southern district of New York, at the circuit court rooms in New York city, on the —th day of February, 1882.

50 Present: Hon. Samuel Blatchford, circuit judge.

ABRAHAM G. JENNINGS and WARREN P. JENNINGS
vs.
HENRY R. KIBBE, EDWARD J. CHAFFEE, GEORGE H. Shreve, Henry S. Stokes, Albert K. Thompson, and Henry G. Kibbe, Doing Business as Kibbe, Chaffee, Shreve & Co. } In Equity.

This cause having come on for final hearing at this October term of the circuit court upon the bill of complaint, the answer of defendants, and the filed papers and exhibits, and the testimony taken therein, now, after hearing A. V. Briesen, Esq., of counsel for complainants, and John R. Bennett, Esq., of counsel for defendants, and due deliberation had, and on motion of Briesen & Betts, complainants' solicitors, it is hereby—

Ordered, adjudged, and decreed that the design letters
51 patent of the United States issued to Abraham G Jennings on the 1st day of January, 1878, as No. 10388, for a new and original design for lace purling, and the design letters patent of the United States issued to Warren P. Jennings on the 12th day of February, 1878, as No. 10448, for a new and original design for fringed lace fabric, are good and valid in law; that the complainants herein are entitled to the exclusive rights in, to, and under said two design letters patent and in and to the inventions and designs secured thereby; that the defendants, Henry R. Kibbe, Edward J. Chaffee, George H. Shreve, Henry S. Stokes, Albert K. Thompson, and Henry G. Kibbe have infringed upon the claims of said two design letters patent and upon the exclusive rights of the complainants thereunder.

And it is further ordered, adjudged, and decreed that the
52 complainants do recover from the defendants, Henry R. Kibbe, Edward J. Chaffee, George H. Shreve, Henry S. Stokes, Albert K. Thompson, and Henry G. Kibbe, the profits, gains, and advantages which the said defendants have derived, received, or made by reason of the infringement of the complainants' exclusive rights under said two design letters patent by any manufacture, use, or sale of fabrics containing said inventions and designs, or either of them, and that the said complainants do also recover in addition any and all damages they have sustained by reason of any infringe-

ment of their exclusive rights under said two design letters patent, or either of them, by the said defendants, and it is hereby referred to Joseph M. Deuel, Esq. (the parties having consented in writing thereto), one of the masters of this court, to ascertain, take, and report the quantity of fabrics made and the quantity
53 sold by said defendants, Henry R. Kibbe, Edward J. Chaffee, George H. Shreve, Henry S. Stokes, Albert K. Thompson, and Henry G. Kibbe, in violation of said two design letters patent, or either of them, and the quantity of such fabrics which said defendants have on hand, and the gains, profits, and advantages derived by said defendants from and through said infringements, and to assess the damages suffered by the complainants by reason of said infringements, and to report thereon with all convenient speed; and the defendants, Henry R. Kibbe, Edward J. Chaffee, George H. Shreve, Henry S. Stokes, Albert K. Thompson, and Henry G. Kibbe, are hereby directed and required to attend before said master from time to time, as required, and produce before him such books, papers, exhibits, statements, vouchers, and documents as they may be
54 directed by said master to produce, and to submit to such oral or other examinations as the master may direct.

And is further ordered, adjudged, and decreed that a perpetual injunction be issued out of and under the seal of this court enjoining and restraining the defendants, Henry R. Kibbe, Edward J. Chaffee, George H. Shreve, Henry S. Stokes, Albert K. Thompson, and Henry G. Kibbe, and their servants, agents, attorneys, representatives, and workmen from directly or indirectly making, or causing to be made, constructing, or causing to be constructed, using, or causing to be used, vending, or causing to be sold, delivering, or causing to be delivered, working, or causing to be worked, or putting into practice, operation, or use, or in anywise counterfeiting or imitating the said inventions and designs, or either of them, or any part or parts thereof, or any fabrics made in accordance there-
55 with, or like or similar to those which the said defendants and their firm of Kibbe, Chaffee, Shreve & Co. have heretofore made, used, or sold, containing or embodying the inventions or designs described and claimed in said two design letters patent, No. 10388 and No. 10448, or either of them, in any way whatsoever.

And it is further ordered, adjudged, and decreed that the complainants do recover of the defendants, Henry R. Kibbe, Edward J. Chaffee, George H. Shreve, Henry S. Stokes, Albert K. Thompson, and Henry G. Kibbe, the costs of this suit, to be taxed, and that the question of the increase of damages and all further questions be reserved until the coming in of the master's report.

SAM'L BLATCHFORD.

56 Endorsed: U. S. circuit court, so. dist. of New York. A. G. Jennings *et al. vs.* Henry R. Kibbe *et al.* Notice and copy of proposed decree. Briesen & Betts, comp'ts' sol'rs, 229 Broadway, New York. U. S. circuit court. Filed Feb'y 24, 1882. Joseph M. Deuel, clerk.

57 U. S. Circuit Court, Southern District of New York. In Equity.

A. G. JENNINGS *et al. vs.* HENRY R. KIBBE *et al.*

To the court:

Under the order of the court made and entered herein on the 24th day of February, A. D. 1882, this cause was referred to me to ascertain, take, and report the quantity of fabrics made and the quantity sold by the defendants, and the quantity of such fabrics which said defendants have on hand, and the gains, profits, and advantages derived by said defendants, and to assess the damages suffered by the complainants by reason of the infringement complained of.

In discharging the duties thus assigned to me a number of sessions were had, at which the complainants were represented
58 by Mr. A. V. Briesen, of counsel, and the defendants by Mr. John R. Bennett, of counsel.

From the statements filed by the defendants and *and* the evidence taken I find as matter of fact:

I.

That the defendants have not made fabrics infringing complainants' letters patent.

II.

That defendants received on consignment from Thomas Dolan & Co., of Philadelphia, Pa., twenty-seven hundred and seven dozen of the said purl lace nubias, which infringed complainants' patent, and that they sold twenty-two hundred and eighty-one & $\frac{5}{12}$ dozen, and returned to said Thomas Dolan & Co. four hundred and twenty-five & $\frac{7}{12}$ dozen, and therefore said defendants had no fabrics on hand which infringed said letters patent.

III.

59 I further find and report that complainants had an established license fee of sixty cents for each dozen of said fabrics, less a discount of ten cents on each dozen, to wit: fifty cents on each dozen so sold by defendants.

IV.

I find as conclusion of law that the complainants are entitled to fifty cents upon each dozen of said purl lace nubias sold as aforesaid by the defendants, amounting to the sum of eleven hundred and four dollars and twenty cents, with interest thereon to the date of this report, amounting to fifty dollars and forty-two cents, and amounting in the aggregate to eleven hundred fifty-four dollars and sixty-two cents.

All of which is respectfully submitted.

JOSEPH M. DEUEL, *Master.*

N. Y., Oct. 5th, 1882.

60 Endorsed: U. S. circuit court, so. dist. of N. Y. A. G. Jennings *et al. vs.* Henry R. Kibbe *et al.* Master's report. U. S. circuit court. Filed Oct. 6, 1882. Joseph M. Deuel, clerk.

61 *Affidavit of Service.*

U. S. Circuit Court, So. Dist. of N. Y. In Equity.

A. G. JENNINGS *against* HENRY R. KIBBE *et al.*

STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

Harry M. Turk, being duly sworn, says that he is of the age of eighteen years and upwards; that on the 4th day of Dec., 1882, between the hours of 2 p. m. and 4 p. m., at 237 Broadway, N. Y. city, he served Geo. Harding and John R. Bennett, the sol'rs for def'ts herein, with the annexed notice and final decree by showing them the same and by leaving a copy of the same with a clerk in charge of said office during said Bennett's and Harding's absence therefrom; and further says that he knew the persons served to be the sol'rs for def'ts in this action.

HENRY M. TURK.

Sworn before me this fourth day of December, 1882.

62 [NOTARIAL SEAL.] WILLY G. E. SCHULTZ,
Notary Public, Kings Co., N. Y.

Certificate filed in N. Y. Co.

63 United States Circuit Court, Southern District of New York.
In Equity.

ABRAHAM G. JENNINGS *et al.*
vs.
HENRY R. KIBBE *et al.*
} Docket No. 1926.

Take notice that on Friday, the 8th day of December, 1882, at the opening of the court on that day, or as soon thereafter as
64 counsel can be heard, we shall present the final decree, a copy of which is herewith served upon you, to his honor Judge Wallace, at the court-room of this court, in the post-office building, New York city, for settlement.

Yours, BRIESEN & BETTS,
Complainants' Solicitors.

New York, Dec. 4, 1882.

To George Harding, Esqr., and John R. Bennett, Esqr., defendants' solicitors.

At a term of the circuit court of the United States held in and for the second circuit and southern district of New York, at the circuit court rooms in the city of New York, on the 8th day of December, 1882.

Present: Hon. William J. Wallace, circuit judge.

ABRAHAM G. JENNINGS and WARREN P. JENNINGS
vs.
65 HENRY R. KIBBE, EDWARD J. CHAFFEE, George H. Shreve, Henry S. Stokes, Albert K. Thompson, and Henry G. Kibbe, Doing Business as Kibbe, Chaffee, Shreve & Co.
} In Equity. Docket No. 1926.

The master's report made in pursuance of the interlocutory decree

in this cause having been duly filed on the 6th day of October, 1882, and no exceptions thereto having been filed by either party, which said master's report finds eleven hundred and four dollars and twenty cents ($1,104.20) as recoverable damages, and fifty dollars and forty-two cents ($50.42) as interest thereon to the 5th day of October, 1882, being the date of said report:

Now, therefore, upon consideration thereof, and on motion of Briesen & Betts, complainants' solicitors, it is ordered, adjudged, and decreed:

66 That the said master's report be, and the same is hereby, in all things confirmed, and that the complainants, Abraham G. Jennings and Warren P. Jennings, do recover of the defendants, Henry R. Kibbe, Edward J. Chaffee, George H. Shreve, Henry S. Stokes, Albert K. Thompson, and Henry G. Kibbe, and their firm of Kibbe, Chaffee, Shreve & Co., the sum of one thousand and hundred and fifty-four dollars and sixty-two cents ($1,154.62), together with the costs and disbursements in this cause as adjusted by the clerk of this court, amounting to the sum of one hundred and twenty dollars and thirty-nine cents ($120.39), amounting in all to the sum of one thousand two hundred and seventy-five dollars and one cent ($1,275.01), and that said defendants pay said sum to the complainants, and that the complainants have execution and proper process of this court for the collection thereof.

WM. J. WALLACE.

67 Endorsed: U. S. circuit court, so. dist. of New York. A. G. Jennings *et al. vs.* Henry R. Kibbe *et al.* Notice and final decree. Briesen & Betts, sol'rs for comp'ts, 229 Broadway, New York. Filed in court Dec. 8, 1882. Service of within notice and final decree admitted this 4th day of December, 1882. —— ——, sol'r for def'ts.

68 United States Circuit Court, Southern District of New York.
In Equity.

A. G. JENNINGS *et al. vs.* HENRY R. KIBBE *et al.*

I hereby consent that Messrs. Briesen and Betts be substituted as solicitors for the complainants in the above-entitled case.

A. V. BRIESEN,
Sol'r for Comp'ts.

Ordered accordingly.

SAM'L BLATCHFORD.

Please take notice that we appear as solicitors for the complainants in the above-entitled case.

New York, May 21st, 1881.

BRIESEN & BETTS.

To J. M. Deuel, Esq'r, cl'k U. S. C. C., S. D. of N. Y., and Mess. George Harding & John R. Bennett, sol'rs for def'ts.

69 Endorsed: U. S. circuit court, S. dist. of New York. A. G. Jennings *et al. vs.* Henry R. Kibbe *et al.* Notice of substitution. Briesen & Betts, sol'rs for comp'ts, 229 Broadway, New York. U. S. circuit court. Filed May 26, 1881. Joseph M. Deuel, clerk.

70 U. S. Circuit Court, Southern District of New York. In Equity

ABRAHAM G. JENNINGS and WARREN P. JENNINGS
vs.
HENRY R. KIBBE, EDWARD J. CHAFFEE, GEORGE H. Shreve, Henry S. Stokes, Albert K. Thompson, & Henry G. Kibbe, Doing Business as Kibbe, Chaffe, Shreve & Co. } Docket No. 1926.

We hereby consent that Briesen & Steele be substituted as the solicitors for the complainants in the above-entitled case in our place and stead.

New York, 14th Feb'y, 1883.

BRIESEN & BETTS,
Comp'ts' Solicitors.

Endorsed: U. S. circuit court, south. dist. of N. Y. Docket No. 1926. A. G. Jennings & *al. vs.* Henry R. Kibbe & *al.* Consent & order of substitution. Briesen & Betts, comp'ts' sol't'rs, 229 B'way, N. Y. U. S. circuit court. Filed Feb'y 15, 1883. Joseph M. Deuel, clerk.

71 United States Circuit Court, Southern District of N. Y. In Equity.

ABRAHAM G. JENNINGS *et al. vs.* HENRY R. KIBBE *et als.*

It is hereby stipulated that the foregoing papers shall constitute the record to be sent by the clerk of this court to the clerk of the Supreme Court of the United States on the appeal taken to said Supreme Court in the above-entitled suit, and that all the exhibits in the cause may be retained by the clerk of this court until the hearing on appeal in said Supreme Court, except the exhibits offered in evidence before the master, which shall be withheld and con-

72 sidered as forming no part of the record on appeal.

Dated New York, Sept'r 26, 1883.

(S'g'd) JOHN R. BENNETT,
Counsel for Def't.

(S'g'd) BRIESEN & STEELE,
Compl'ts' Sol'rs.

(Endorsed:) U. S. circuit court, S. D. of N. Y. Jennings *vs.* Kibbe & *al.* U. S. circuit court. Stipulations to record, etc. Filed Sep. 26, 1883. Timothy Griffith, clerk.

73 United States Cir'c't Court, Southern District of N. Y., Second Circuit. In Equity.

ABRAHAM G. JENNINGS and WARREN P. JENNINGS
vs.
HENRY R. KIBBE, EDWARD J. CHAFFEE, GEORGE H. SHREVE, HENRY S. Stokes, Albert K. Thompson, and Henry G. Kibbe, Doing Business as Kibbe, Chaffee, Shreve and Company.

To the honorable the Supreme Court of the United States:

The appeal of the above-named defendants and appellants respectfully showeth:

That the above-named complainants and appellees filed their bill of complaint in the circuit court of the United States for the southern district of New York against the above-named defendants and appellants, reciting the grant and issue of two design letters
74 patent of the United States, No. 10388, to Abraham G. Jennings, January 1, 1878, for a new and original design for "lace purling," and design letters patent No. 10448, granted Warren P. Jennings February 12, 1878, for a new and original design for "lace fabric," and charging that the said defendants and appellants had infringed each of the said two design letters patent, and praying for a decree, an injunction, and account.

That these defendants and appellants appeared and filed answer denying the allegations of the said bill of complaint, and that they infringed either of said two design letters patent, or intended so to do.

That thereafter this cause was heard on the pleadings and proofs taken therein by his honor Samuel Blatchford, circuit judge, who afterwards, and on or about the twentieth day of February,
75 A. D. 1882, filed an opinion sustaining the validity of each of the said design letters patent, and finding that said defendants and appellants had infringed each of said design letters patent, and ordering an interlocutory decree to be entered in favor of complainants and ap-ellees, as prayed for.

That in accordance therewith an interlocutory decree was entered ordering an injunction to issue restraining said defendants and appellants from further infringing said two design letters patent, and referring this cause to a master to take an account of the gains, profits, and advantages derived by the said defendants and appellants from and through said infringements, and to assess the damages suffered by complainants by reason of said infringement, and that complainants and appellees recover their costs in this suit to be taxed.

That the master to whom this cause was so referred, having
76 taken proofs and heard the parties onthe matters referred to, made his report thereon, to which no exceptions were filed by the said defendants and appellants, and on December 8, 1882, a final decree was entered in this cause confirming the report of the master, and wherein it was ordered that the complainants and appellees herein do recover from the said defendants and appellants

the sum of twelve hundred and seventy-five dollars and one cent ($1,275.01), and that the complainants and appellees have due execution and proper process for the collection thereof.

Wherefore these appellants appeal from the whole of the decree of the said circuit court of the United States and respectfully pray that the decree of the said circuit court of the United States and the pleadings, proofs, exhibits, and proceedings in said cause may be forthwith sent to the Supreme Court of the United States, and
77 that said Supreme Court will proceed to hear the said cause anew, and that the said decree of the said circuit court and every part thereof may be reversed and a decree made dismissing said bill of complaint with costs, or such other decree as to the said Supreme Court shall seem just.

JOHN R. BENNETT,
Counsel for Defendants and Appellants.

The appeal is allowed as prayed for; citation to issue, bond having been approved.

January 1*th*, 1883.

WM. J. WALLACE.

Service admitted January 10, 1883.

A. V. BRIESEN,
For Comp't.

[Endorsed:] U. S. circuit court. Filed Jan. 11, 1883. Joseph M. Deuel, clerk.

78 *Bond for Damages and Costs.*

Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

ABRAHAM G. JENNINGS and WARREN P. JENNINGS
vs.
HENRY R. KIBBE, EDWARD J. CHAFFEE, GEORGE H. SHREVE, HENRY S. STOKES, Albert K. Thompson, and Henry L. Kibbe, Trading as Kibbe, Chaffee, Shreve and Co.

Know all men by these presents that we, Edward J. Chaffee, Alfred Moorhouse, and Duncan E. Mackenzie, all of the city, county, and State of New York, are held and firmly bound unto the above-named complainants in the sum of two thousand five hundred dollars, to be paid to the said complainants, for themselves, their heirs, executors, administrators, or assigns, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the — day of ——, in the year of our Lord one thousand eight hundred and eighty-three (1883).

Whereas the above-named defendants have prosecuted an appeal to the Supreme Court of the United States to reverse the decision

rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named defendants shall prosecute said appeal to effect and answer all damages and costs if they shall fail to make the said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

EDWARD J. CHAFFEE. [L. S.]
ALFRED MOORHOUSE. [L. S.]
DUNCAN E. MACKENZY. [L. S.]

Sealed and delivered and taken and acknowledged this 19th day of January, 1883, before me—

WALTER J. FORD.

79 UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

Edward J. Chaffee, Alfred Moorhouse, and Duncan E. Mackenzie, being duly sworn, did depose and say, each for himself, that he is worth the sum of two thousand and five hundred dollars over and above all his just debts and liabilities.

EDWARD J. CHAFFEE.
ALFRED MOORHOUSE.
DUNCAN MACKENZIE.

Sworn to this 19th day of January, A. D. 1883, before me—
WALTER J. FORD, [L. S.]
Notary Public (25), *Co. of N. Y.*

[Endorsed:] U. S. circuit court. Abraham G. Jennings *et al. vs.* Henry R. Kibbe *et al.* Bond for damages and costs on U. S. circuit court. Filed Jan. 23, 1883. Joseph M. Deuel, clerk. Approved Jan'y 22, 1883. Wm. J. Wallace.

We hereby consent that the within bond be substituted in place of bond now on file, and allow the bond already filed to be returned and this bond filed instead thereof.

N. Y., Jan'y 20, '83.

BRIESEN & BETTS,
Comp'ts' Solicitors.
JOHN R. BENNETT,
Def'ts' Counsel.

80 By the Honorable William J. Wallace, judge of the circuit court of the United States in and for the second circuit and southern district of New York.

To Abraham G. Jennings and Warren P. Jennings:

Whereas Henry R. Kibbe, Edward J. Chaffee, George H. Shreve, Henry S. Stokes, Albert K. Thompson, and Henry G. Kibbe, doing business as Kibbe, Chaffee, Shreve and Company, have lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the sec-

ond circuit and southern district of New York in favor of you, the said A. G. Jennings and W. P. Jennings, and have filed the security required by law, you are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the second Monday of October, A. D. 1883, to do and receive what may ap-
81 pertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, this 10th day of January, anno Domini one thousand eight hundred and eighty-three (1883).

W. J. WALLACE.

Endorsed: Service admitted Jan'y 11th, 1883. A. V. Briesen, for comp't. U. S. circuit court. Filed, Jan. 11, 1883. Joseph M. Deuel, clerk.

82 UNITED STATES OF AMERICA, } *ss.:*
Southern District of New York, }

I, Timothy Griffith, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to eighty-one, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Abraham G. Jennings and Warren P. Jennings against Henry R. Kibbe, Edward J. Chaffee, George H. Shreve, Henry S. Stokes, Albert R. Thompson, & Henry G. Kibbe as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 3d day of October, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the said United States the one hundred and eighth.

[Seal of U. S. Circuit Court.]

TIMOTHY GRIFFITH, *Clerk.*

Endorsed on cover: S. New York C. C. U. S. No. 152. Henry R. Kibbe, Edward J. Chaffee, George H. Shreve, Henry S. Stokes, Albert K. Thompson, and Henry G. Kibbe, doing business as Kibbe, Chaffee, Shreve & Company, appellants, *vs.* Abraham G. Jennings and Warren P. Jennings. Filed 12th October, 1883.